IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4497 OF 1992.

Nivrutti Chandrabhan Irase : Petitioner.

versus

Shankar Gokul Lakariya : Respondent.

Mr.S.M.Mhamane for the petitioner.

Mr.P.J.Shinde for the respondent.

WITH

WRIT PETITION NO.86 OF 1993

AND

WRIT PETITION NO.87 OF 1993.

Shankar Gokul Lakariya : Petitioner.

versus

Nivrutti Chandrabhan Irase : Respondent.

Mr.P.J.Shinde for the petitioner.

Mr.S.M.Mhamane for the respondent.

CORAM : D.G.DESHPANDE, J.

DATED : October 16, 2006.

ORAL ORDER

1. Heard advocates for the petitioner and respondent. Writ Petition No.4497 of 1992 is filed by the tenant and other two petitions i.e. Writ Petition Nos.86 of 1993 and 87 of 1993 are filed by the landlord. The matters are under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. I will be referring the parties to the petitions as "the landlord" and "the tenant". The suit property was situated at Mouje Bhagur, Dist.Nashik. It was originally owned by one Khandu Babu Khemkar who sold it to the present landlord Shankar Lakariya by sale deed dated 15.4.1983 along with the rights to recover the arrears of rent from 1.1.1981. Then landlord gave a notice dated 23.4.1984 terminating the tenancy of tenant and demanding arrears of rent from 1.1.1981 and, the possession was claimed on the ground that defendant/tenant was in arrears of rent for more than six months and therefore he was a defaulter. Secondly, the landlord and his brother required the suit premises for bonafide use and occupation. Thirdly, the defendant/tenant has made permanent

construction without consent of the landlord. This suit was filed before the Joint Civil Judge, J.D. Nashik. The defendant/tenant had also filed a counter suit. The trial Court framed issues and delivered a common judgment dismissing the suit of the plaintiff/landlord but gave him a liberty to withdraw the amount deposited by the defendant/tenant and, the suit filed by the defendant/tenant bearing Regular Civil Suit No.392 of 1984 for permanent injunction was decreed.

2. The landlord filed two appeals against both these judgments and decree of the trial Court before the District Judge, Nashik. The District Judge, Nashik dismissed the suit of the defendant/tenant and decreed the suit of the landlord and, directed the defendant/tenant to hand over vacant possession of the premises to the landlord and, therefore, now the tenant has filed Writ Petition No.4497 of 1992 and the landlord has filed two Writ Petitions.

3. The learned advocate for the landlord however contended that if he succeeds in the writ petition filed by the tenant, then he will not

press his two writ petitions filed by landlord being Writ Petition Nos.86/93 and 87/93.

4. The appellate Court granted decree for eviction on the ground of non-payment of rent for four to nine months. The decree granted by the trial Court is under Section 12(3)(b) of the Bombay Rent Act. The appellate Court did not accept the case of the landlord about bonafide requirement.

5. Therefore, the crucial question is, whether the appellate Court is justified in coming to the conclusion that the tenant was in arrears of rent of more than six months and the landlord was entitled to a decree under Section 12(3)(b) of the Bombay Rent Act. Section 12(3)(b) of the Bombay Rent Act reads thus :-

> "In any other case, no decree for eviction shall be passed in any such suit, if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due [and

thereafter, - (i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and (ii) also pays costs of the suit as directed by the Court].

6. The landlord has purchased this property from original owner Khandu Khemkar by sale deed dated 15.4.1983 with right to recover the arrears of rent from 1.1.1981. However, the landlord did not file original sale deed on record and, therefore, the appellate Court did not accept his case regarding recovery of rent prior to the date of the sale deed.

7. After becoming the owner of the property, the landlord issued noticed on 23.4.1984 (Exhibit 45). Its acknowledgement is at Exhibit 46 which shows that the notice was served upon the tenant on 25.4.1984. In the notice the arrears were shown from 1.1.1981 but in any case the landlord has become the owner from 15.4.1983 and he was entitled to recover rent subsequent to his becoming owner. The defendant/tenant has nothing with him to show that he paid rent from the date of landlord becoming owner of the property.

8. The appellate Court held that tenant can avoid eviction under section 12 (3)(a) either by paying rent claimed in the notice within one moth or by raising a dispute about the standard rent. The defendant/tenant should have tendered rent on or before 25.5.1984. The tenant however filed an application for fixing the standard rent on the reopening of the Court on 11.6.1984 after summer vacation.

9. From the facts it is clear that the arrears from April 1983 was due against the tenant till the date of issue of notice. The issues were framed in the suit on 2.10.1986. But all the arrears were not paid or deposited in the Court on or before 2.10.1986.

10. Mr.Mhamane, the learned advocate appearing for the petitioner/tenant, contended that the defendant has sent rent by money order after receipt of the notice of the landlord and that should be sufficient compliance as the tenant has produced Exhibits 68 and 69. However, the advocate for the landlord immediately pointed out that there was no endorsement of refusal on

any of these money orders and, therefore, no presumption can be drawn in favour of the tenant. This submission of the landlord has to be accepted in the absence of any endorsement of refusal on the money orders coupons.

11. Then Mr.Mhamane, the learned advocate for the petitioner/tenant, contended that mathematical regularities in payment of rent is not required. He relied upon the judgment of the Supreme Court in the case of **Mohan Laxman Hede v/s. Noormohamed Adam Shaikh** reported in **(AIR 1988 SC 1111)** and contended that there was no order of the trial court to pay rent regularly.

12. It may be true that mathematical regularities may not be there. However, the appellate Court has given all the particulars of deposit of rent in para 10 of its judgment. The said particulars are as under :-

Sr.No.	Date of Deposit	Amount	Period Covered.
1.	22.7.1985	600/-	November 1984
2.	24.1.1986	400/-	December 1985
3.	2.7.1986	300/-	October 1986

4.	29.11.1986	200/-	May 1987
5.	12.4.1989	540/-	November 1988
6.	12.4.1989	200/-	May 1989
7.	22.12.1989	200/-	December 1989
8.	25.10.1990	250/-	August 1990
9.	15.4.1991	250/	May 1991
10.	21.12.1991	200/-	November 1991
11.	25.6.1992	200/-	June 1992.

The contention of learned advocate Mr.Mhamane that there was no order of the Court to pay rent regularly every month and, therefore, the tenant was in believing that he can pay rent as and when he is possessed of sufficient funds. This argument cannot be accepted. Even under the Transfer of Property Act, in the absence of contract to the contrary, tenancy of residential premisses is month to month and rent has to be paid after the expiry of every month. The tenant cannot pay rent according to him and caprice and, he cannot be permitted to contend that the court did not ask him to pay rent regularly. It is a contractual obligation which he must perform. Mathematical regularities may not be there, but he just cannot take advantage of this aspect and go on committing default every time.

13. Apart from this, the counsel for the respondent has relied upon the judgment of the Supreme Court in the case of **Kulkarni Patterns Pvt.Ltd. and ors. v/s. Shri Vasant Baburao Ashtekar and ors.** reported in **(1992 Mah.RCJ 164)**. In that case the defendant did not deposit the entire arrears on first date of hearing and also did not deposit the further rent during pendency of appeal and, therefore, the Supreme Court held that "It was also held by the Additional District Judge that the provisions of Sec.12(3)(b) of the Act were mandatory provisions and those were required to be strictly complied with by the tenants during the pendency of the suit and also appeal when the landlord claims possession of the suit premises on the ground of Section 12(3)(b) of the Act." Consequently, the appeal of the tenant was dismissed and decree against the tenant under Section 12(3)(b) was confirmed by the Supreme Court.

14. The advocate for the respondent therefore contended that firstly the tenant did not deposit the entire amount within one month as stipulated; secondly even if the tenant filed application for

fixing the standard rent, he remained contending by merely filing such application, but did not seek any orders regarding monthly deposit and; thirdly even thereafter during pendency of the suit and appeal he committed repeated defaults as per the particulars noted above.

15. Considering the facts and circumstances and the legal position, in my view, this is a case where the appellate Court rightly decreed the suit of the plaintiff/landlord and set aside the judgment of the trial Court. Hence no interference is called for in this petition. Therefore, Writ Petition No.4497 of 1992 filed by the tenant/petitioner is dismissed with costs. Rule is discharged. Consequently, the Writ Petition Nos.86 of 1993 and 87 of 1993 have disposed of as not pressed by the landlord.

[D.G.DESHPANDE, J.]

. After this order was pronounced, the learned advocate appearing for the petitioner prays for time. The prayer was opposed by the learned advocate appearing for the respondent,

but ultimately he conceded that if the petitioner Nivrutti Chandrabhan Irase gives an undertaking to this Court to vacate the premises within a time granted by this Court, he will have no objection. The learned advocate for the petitioner asked the petitioner who is present in Court. I personally verified from him and he admitted that he will abide by the undertaking. Hence the time is granted. This petitioner to vacate the premises on or before 28th February 2007. He should give an undertaking in writing to this Court in that regard within four weeks from today. If the undertaking is not given within the aforesaid stipulated time, this concession will not survive.

16/10/2006 **[D.G.DESHPANDE]**